

EXHIBIT 1

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1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF DELAWARE
3 - - -
4 TEXTRON INNOVATIONS INC., : Civil Action
5 Plaintiff, :
6 v. :
7 TORO COMPANY, :
8 Defendant. : No. 05-486-GMS

9 - - -
10 Wilmington, Delaware
11 Tuesday, September 19, 2006
12 10:00 a.m.

13 - - -
14 BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

15 APPEARANCES:

16 EDMOND D. JOHNSON, ESQ.
17 The Bayard Firm
18 -and-
19 SCOTT L. ROBERTSON, ESQ.,
20 CHRISTOPHER C. CAMPBELL, ESQ., and
21 MICHAEL P.F. PHELPS, ESQ.
22 Hunton & Williams
23 (Washington, D.C.)
24 Counsel for Plaintiff
25 RICHARD L. HORWITZ, ESQ.
POTTER Anderson & Corroon, LLP
-and-
EARL D. REILAND, ESQ., and
ANTHONY R. ZEULI, ESQ.
Merchant & Gould
(Minneapolis, Minnesota)
Counsel for Defendant

1 cutting deck assembly entail?

2 Now, the defendants are quick to argue, it
3 doesn't simply say rotary cutting deck. It says assembly.
4 And assembly suggests that it's made up of a number of
5 components. And so the defendants look at this and say, it
6 should be defined as a cutting unit having five separate
7 elements. So it includes five limitations from the summary
8 of the invention. A laterally-spaced, generally-vertically
9 extending side plates, it should have a second element, a
10 cross member, the assembly should include front wheels
11 supporting the side plates, it should have a fourth element,
12 a rear roller extending between and supporting the side
13 plates, and should have a fifth element, a single-spindle
14 rotary deck mounted between the side plates.

15 What it does is goes through the specification
16 and imports all of that structure and says, this must make
17 up the cutting deck assembly.

18 Now, to be sure, the specification discusses an
19 exemplary embodiment that says it can have this structure.
20 And indeed, the Court will see, there are other claims that
21 in fact specifically do claim certain elements of that
22 structure. But with respect to Claim 1, we could go to the
23 last element of Claim 1, if you could blow up that, what
24 Claim 1 does is indeed specifically and expressly recite
25 what the assembly includes. It says, each of the front and

1 rear deck assemblies including, and here is where it tells
2 you the structure, a single-spindle cutting deck defining a
3 downwardly opening space. That is the first part of the
4 assembly.

5 No. 2. A single spindle mounted for rotation
6 about a generally vertical axis within the space. It's the
7 second part of the assembly.

8 No. 3. At least one cutting blade mounted on
9 the spindle for rotation therewith.

10 No. 4. A rear roller supporting the deck for
11 movement over the ground.

12 Then it provides essentially some spatial
13 relationship for that rear roller, the deck having a width
14 such that the roller extends substantially across the entire
15 width of the deck.

16 That is the structure of the assembly, Your
17 Honor.

18 It is not, if we could go back to 461, the
19 structure that the defendants have called completely from
20 the specification, rewriting that claim. So they are
21 essentially asking, ignore the structure that is disclosed
22 as specifically being the deck assemblies that is recited
23 expressly in Claim 1 and rewrite the claim to include these
24 five elements. I would suggest to Your Honor that that
25 would be pure error, for the Court to rewrite those claims,

1 first, this is the rear discharge rotary cutting deck for a
2 mower. In fact, this is one of the cutting decks that is
3 accused of being infringed. This is the patent that covers
4 the Toro commercial embodiment. Of course, this was issued
5 in 2002. But if you go to Claim 3, I thought it was
6 interesting that there is an almost identical type of
7 limitation to describe the spatial relationship, whereas the
8 ramp spans across substantially the entire width of the
9 grass discharge channel.

10 I raise this point only because I think a person
11 of ordinary skill in the art certainly readily apprehends,
12 and in fact when Toro applied for patents they knew how to
13 describe something that had a spatial relationship that was
14 spanning substantially across the width of something.

15 If I could, Your Honor, just to use the Figure 3
16 drawings, if we could go to Figure 3 first, and show --
17 Figure 3 of the '530 patent. What I am trying to illustrate
18 here, Your Honor, I have superimposed over this rotary
19 cutting deck a red circle. Then I have traced extending on
20 from the rollers a blue line, which shows the width of the
21 roller. And now what I would like to do, Your Honor, is
22 remove the figure, but maintain the lines. And as you will
23 see here, indeed, the figures, which I would remind the
24 Court are only exemplary and not to be controlling, but at
25 least it demonstrates that a person of ordinary skill in the

1 art was contemplating that this roller might, for example,
2 not extend to one edge of the rotary cutting deck, and
3 extend perhaps a little further beyond the rotary cutting
4 deck.

5 That's just one example. What I would like to
6 show Your Honor now, if we could go to Claim 10 of the '311
7 patent, this limitation was described with respect to the
8 rotary cutting deck. But it also was described with respect
9 to the roller and the cutting path. I think this is going
10 to be very illustrative, Your Honor.

11 Claim 10 of the '311 patent specifically, you
12 will see the very last, said roller, last element, last
13 fragment, said roller extending substantially across the
14 entire width of said cutting path. The cutting path is
15 obviously the path that is created when the blade cuts the
16 grass.

17 If we could go back to Figure 3 again. What I
18 have done here, Your Honor, is you will note the blade is
19 the dashed line that is illustrated under the cutting deck.
20 I have taken where the end of that blade is and I have
21 superimposed a red circle. That would be the diameter of
22 the cutting path. And again, the green lines here are where
23 the blue lines were positioned in the prior figure, that is
24 illustrating the ends of the roller. Now I am going to
25 remove the figure again.

EXHIBIT 2

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TEXTRON INNOVATIONS INC.,

Plaintiff,

Y.

THE TORO COMPANY,

Defendant.

C. A. No. 05-486 (GMS)

**PLAINTIFF TExTRON INNOVATIONS INC.'S CORRECTED'
OPENING MARKMAN BRIEF IN SUPPORT OF ITS
PROPOSED CLAIM CONSTRUCTION**

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Textron Innovations Inc.**

¹ Corrected to include citations to the Joint Appendix.

assemblies are "mounted on the frame," '530 patent at 5:47-48 (JA 0009), and 5:51-52 (JA 0009), then *further* recites that the deck assemblies are mounted with structure to provide pivotal movement about "a generally vertical axis," "a generally horizontal axis extending in the forward-rearward direction," and "a generally horizontal, laterally-extending axis" — that is, about three mutually perpendicular axes. *Id.* at 5:62-6:16 (JA 0009). Because Toro's interpretation of "mounted on the frame" would already require these three pivoting relationships, the portions of claim 7 that recite pivotal movement about the three perpendicular axes would be superfluous and unnecessary. For this additional reason, Toro's interpretation is legally incorrect. *See Phillips*, 415 F.3d at 1314-1315.

E. "Deck Defining A Downwardly Opening Space" Should Be Given Its Ordinary And Customary Meaning

Toro also asks the Court to interpret the limitation "deck defining a downwardly opening space." Once again, this limitation is simple, straightforward, and used consistently with its ordinary and customary meaning, and no further clarification is required by the Court. *See Parish Decl.*, Exh. 1 at ¶ 51. If interpretation is required, in keeping with the ordinary and customary meaning, Textron proposes to interpret this limitation as "the deck has a downwardly opening space." This is consistent with the manner in which this limitation is used in the patent specifications: "Each of the cutting deck assemblies 34 includes (see FIGS. 2-5) a single spindle mulching deck 38 defining a downwardly opening space 42 (FIG. 4)." '530 patent at 3:6-8 (JA 0008), 3:45-47 (JA 0008) ("A single spindle 84 (FIG. 4) is mounted for rotation about a generally vertical axis within the space 42 defined by the deck 38.") and Figs. 2-4 (JA 0003-0004); '312 patent at 5:48-50 (JA 0044).

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TEXTRON INNOVATIONS INC.,

Plaintiff,

Y.

THE TORO COMPANY,

Defendant.

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C. A. No. 05-486 (GMS)

**DECLARATION OF RICHARD L. PARISH, PHD, PE, IN SUPPORT OF TEXTRON'S
PROPOSED CLAIM CONSTRUCTION FOR CERTAIN CLAIM TERMS IN U.S.
PATENT NOS. 6,047,530 6,336,311 AND 6,336,312**

I, Richard L. Parish, PhD, PE, declare, depose and state the following:

1. I am a Professor of Agricultural Engineering at the Louisiana State University Agricultural Center in Hammond, LA (LSU) and I am a consultant in agricultural engineering. My business address is 21135 Highway 16, Amite, LA 70422. I have been involved in the farm and maintenance machinery field for over thirty-five years. I am a registered Professional Engineer. I am over eighteen years of age and I would otherwise be competent to testify as to the matters set forth herein if I am called upon to do so at trial.

2. I have been retained by Hunton & Williams, L.L.P. on behalf of the Plaintiff, Textron Innovations Inc. ("Textron"), as a technical expert witness with respect to the proceedings currently before the Court in the above-captioned matter.

3. For purposes of this Declaration, I have been asked to provide an expert technical analysis as to the proper interpretation of certain terms in the claims of U.S. Patent No. 6,047,530 (the "530 patent"), U.S. Patent No. 6,336,311 (the "311 patent") and U.S. Patent No.

deck 38.”), and Figs. 2-4; and ‘312 patent at 5:48-50.

52. In contrast, Toro seeks to interpret this simple term to mean “[a] deck defined by a continuous solid vertical wall of uniform height open at the bottom.” Toro’s proposed construction adds a number of extraneous limitations to the claim language, such as the requirement of a “solid vertical wall” and the wall being “of uniform height.” A person of ordinary skill in the art would not understand the term “deck defining a downwardly opening space” to require these limitations. The patent specifications do not use Toro’s proposed interpretation to describe the decks. In fact, I observe that the words “solid” and “uniform” do not appear in any of the patents in suit, and the word “continuous” appears only three times in the ‘312 patent to describe a continuous roller and a continuous roller stripe. See ‘312 patent at 5:60-65, 7:29-33, and 7:36-38.

“Roller Extends Across Substantially The Entire Width Of The Deck”

53. In my opinion, this term should be interpreted in accordance with its ordinary and customary meaning, namely, the roller extends across substantially the entire width of the deck, but is not required to be exactly as wide as the deck. The patent specifications disclose a roller (58) that extends across substantially the entire width of a cutting deck (38). See, e.g., ‘530 patent at 1:54-56; *id.* at 3:16-21; *id.* at Figs. 2, 3 and 5; ‘312 patent at 5:60-65 (describing ‘312 patent Fig. 9). I understand that Toro believes the use of the word “substantially” renders the claims indefinite. I respectfully disagree. Those of ordinary skill in the art at the time of the invention would understand that the ‘530 patent and ‘311 patent disclose a roller that extends across the width of the deck to provide a continuous striping effect behind the cutting deck. See, e.g., ‘530 patent at 1:54-56. Such a person of ordinary skill in the art would further understand that to provide this continuous striping effect, the roller must extend across substantially the

entire width of the deck, but is not required to be exactly as wide as the deck.

“Lifting Arm”

54. In my opinion, “lifting arm” is used in accordance with its ordinary and accustomed meaning. It means “an arm that is operable to lift at least one cutting deck assembly.” For example, the ‘530 patent describes a “lifting arm” that is used to lift the decks vertically relative to the frame. See ‘530 patent at 1:34-37, 1:57-62, 3:66-4:7, 4:20-31, and Figs. 1-5. While the embodiment of the lifting arm shown in the ‘530 patent is L-shaped and is attached by various pivots, the embodiment is exemplary, see ‘530 patent at 2:25-34, and the claims specifically omit recitation of such features. The ‘312 patent further describes another exemplary embodiment of a “lifting arm” that lifts the a deck relative to the frame, but this additional embodiment has a different shape and various different mounting and pivoting features than the embodiment of the ‘530 and ‘311 patents. See ‘312 patent at 5:66-6:7, 6:13-19, and Figs. 9-10. In addition, ‘530 patent claim 3 recites simply that the “lifting arm” is “operable to lift the associated deck assembly relative to the frame.” ‘530 patent at 5:5-9.

55. I understand that Toro contends that “lifting arm” means “[a] generally L-shaped, horizontally-extending device having inner and outer ends operable to lift the deck assembly relative to the frame, the inner end pivotally connected to the frame, the outer end pivotally connected to the deck assembly for pivotal movement about a generally vertical axis and about a generally horizontal axis extending in the forward-rearward direction. I respectfully disagree.

56. Toro’s proposed construction renders a number of other patent claims, such as ‘530 patent claim 17, redundant. Claim 17 recites, in relevant part “each of the deck assemblies being connected to the frame by a respective generally L-shaped, horizontally-extending *lifting arm* operable to lift the associated deck assembly relative to the frame.” Under Toro’s

EXHIBIT 5

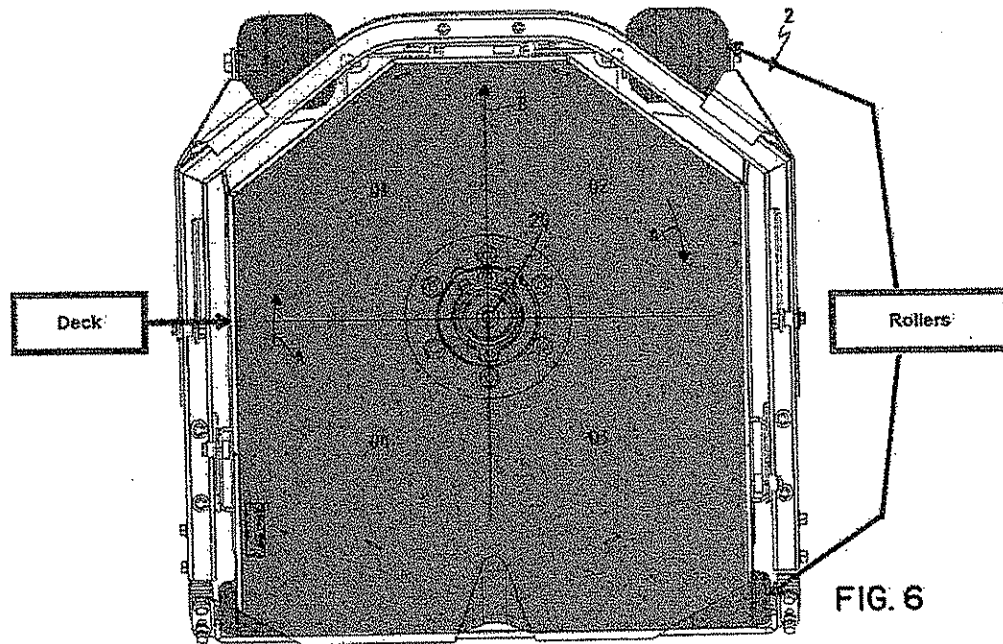


EXHIBIT 6



EXHIBIT 7

argument is specious in this crowded art in which lawn mower manufacturers patent every little improvement made.) In this case, Applicant has made a significant improvement that was not obvious to those of ordinary skill in the art.

Applicant has invented a lawn mower that is, as explained in the Summary of the Invention portion of Applicant's specification, a tremendous improvement over the known prior art, because a rotary mower typically requires substantially less maintenance than a reel mower. Applicant has invented the first rotary mower that is suitable for cutting a golf course rough. Applicant's invention is not just an arbitrary, minor improvement over the prior art. Applicant's invention is a significant step forward in the art, as has been demonstrated by the commercial success of Applicant's lawn mower, which has now been copied by at least two competitors.

Accordingly, claims 1 and dependent claims 2, 4-6 and 10 are allowable.

In view of the foregoing, entry of the above amendment and allowance of claims 1, 2, 4-6 and 10, in addition to the previous allowance of claims 7-9 and 11-20, are respectfully requested.

The undersigned is available for telephone consultation at any time.

Respectfully submitted,

David R. Price
Reg. No. 31,557

File No. 76209/9009

Michael Best & Friedrich LLP
100 East Wisconsin Avenue
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Nov-01-01 07:50pm From: MICHAEL RAY
 For: W-01 07:11pm From: MICHAEL RAY

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and a publication. With the vast number of mower designs and mower manufacturers in the industry, any obvious combination of features that might give a company a competitive edge has likely been tried. Rotary mowers have typically not been used to cut golf course roughs, which require close mowing and the ability to cut undulating terrain at a relatively short length, because nobody prior to me has recognized the desirability of using, or figured out how to use, gang-type rotary mowers to cut golf course roughs. Conventional wisdom in the art of gang-type mowers held that rotary mowers could not be used to cut golf course roughs. My invention of individual cutting units with the addition of rear rollers, however, made the use of gang-type rotary mowers possible to cut golf course roughs. To the best of my knowledge, gang-type rotary mowers have never had such rear rollers.

5. My Gang-type Rotary Mower invention, which was unknown in the industry only a few years ago, is now worth millions of dollars in annual sales to my company and to the companies that copied my invention.

6. For many years, the mower industry had unsuccessfully sought a solution to the problem of scalping grass while mowing over undulating terrain. Previous rotary mowers are ineffective in compensating for elevation changes in the turf being mowed, resulting in uneven cut heights. This is particularly problematic when the turf is cut at or below ground level, leaving bare spots.

7. My invention provides a solution to this problem by teaching an apparatus with excellent ground-following and anti-scalp characteristics.

8. The effectiveness of my invention as a solution to this long-term problem is evidenced by the extraordinary commercial success of my invention. Annual sales of my company's previous gang-type mowers averaged approximately \$4.5 million over the years 1995 to 1997, with no significant increases or decreases from year to year. Our new model embodying my invention was introduced in 1997. The addition of my invention was the only significant change from the prior model. Sales of the new model totaled \$1.3 million in 1997, jumped to \$1.5 million in 1998, and are projected to be \$10 million in 1999. The addition of my invention has more than doubled our mower sales, as compared to our previous model. Because market demand for gang-type mowers remained relatively constant between 1997

Declaration and Power of Attorney For Patent Application

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "GANG-TYPE ROTARY LAWN MOWER" (Attorney Docket No. 78209/9009), the specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

And I hereby appoint JOSEPH A. GENIGNANI, (Reg. No. 19,482), ROBERT E. CLEMENCY (Reg. No. 19,287), DAVID B. SMITH (Reg. No. 27,595), GLENN A. BUSÉ (Reg. No. 24,217), FRED WIVIOTT (Reg. No. 19,158), DAVID R. PRICE (Reg. No. 31,557), ROBERT S. BEISER (Reg. No. 28,607), DAYARD H. MICHAEL (Reg. No. 15,974), CASIMIR F. LASKA (Reg. No. 30,862), KENT S. BARTA (Reg. No. 29,042), DAVID L. DE BRUIN (Reg. No. 35,489), TIMOTHY M. KELLEY (Reg. No. 34,201), ELIZABETH HUNT SCHOETTLY (Reg. No. 36,922), BILLIE JEAN STRANDT (Reg. No. 36,940), THOMAS A. MILLER (Reg. No. 36,871), KEVIN P. MORAN (Reg. No. 37,193) and WITOLD A. ZIARNO (Reg. No. 39,888), 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, Telephone (414) 271-6560, and each or any of them, my attorneys or agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

ADDRESS ALL COMMUNICATIONS IN OR PERTAINING TO THIS APPLICATION TO:

David R. Price
MICHAEL, BEST & FRIEDRICH
100 East Wisconsin Avenue
Milwaukee, WI 53202-4108

08794141.020397

JA - 0072

EXHIBIT 8

Price, David 8/31/2006

FOR THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TEXTRON INNOVATIONS, INC.,

Plaintiff,

-vs-

C.A. No. 05-486

THE TORO COMPANY,

Defendant.

CONFIDENTIAL

Video examination of DAVID PRICE, taken at the instance of the Defendant, under and pursuant to the Federal Rules of Civil Procedure, before MELISSA J. STARK, a Certified Realtime Reporter, Registered Professional Reporter and Notary Public in and for the State of Wisconsin, at Michael, Best & Friedrich, LLP, 100 East Wisconsin Avenue, Milwaukee, Wisconsin, on AUGUST 31, 2006, commencing at 8:59 a.m. and concluding at 4:53 p.m.

Price, David 8/31/2006

Page 82	Page 84
<p>1 have cited it, assuming we determined it was prior 2 art. 3 BY MR. ZSULI: 4 Q Because you always cite anything that's possibly 5 relevant, correct? 6 A Yes. 7 Q Turn, if you would, to the third page, which is 8 248. I'll direct your attention to the third full 9 paragraph. Strike that. Turn to page 247. I'll 10 direct you to the paragraph that begins, "Mowing," 11 and then you'll see underneath it that there is a 12 paragraph that talks about primary rough, correct? 13 A Yes. 14 Q Okay. Now turn to the next page, if you would, 15 please. Second sentence of the third paragraph 16 reads, "In contrast, bunch type species are 17 commonly mowed at a higher cutting height with 18 tractor mounted rotary or vertical mowers." Do 19 you see that? 20 A Yes. 21 Q From this can you understand that as of 1982 it 22 was known to use rotary mowers to cut golf course 23 roughs? 24 MR. CAMPBELL: Objection. Form. 25 THE WITNESS: If this was, in fact,</p>	<p>1 been your practice to have told Mr. Bednar that M 2 would need to identify as possibly prior art 3 industry texts, such as this Turf Management text? 4 A I don't know that I would have specifically 5 mentioned industry texts. We usually just talk in 6 terms of printed publications and patents. 7 Q Have you ever in your 23 years as a patent lawyer 8 provided to the patent office prior art that came 9 from industry texts? 10 A Probably, but I don't have any specific 11 recollection. 12 Q Going back to DDX-23, page 251, I'll direct your 13 attention to the paragraph dealing with leaf 14 removal. Please take a moment to look at that and 15 let me know whether you agree that it's talking 16 about using tractor mounted rotary mowers on golf 17 course roughs to not only cut but to remove 18 leaves? 19 A I see the statement that dry leaves can also be 20 pulverized with a tractor mounted rotary mower. 21 Q And the dry leaves that they're talking about are 22 the dry leaves that drop on a golf course rough, 23 correct? 24 A I don't see anything that specifically mentions a 25 golf course rough.</p>
Page 83	Page 85
<p>1 published in 1982, then it appears to say -- it 2 says that certain species of grass were cut with 3 rotary mowers. 4 BY MR. ZSULI: 5 Q Not just grass, grass in a golf course rough? 6 A That's how I read it. 7 Q During your representation of Mr. Bednar, did you 8 inform him of his duty of candor to the patent 9 office? 10 A I don't recall what conversations we had about his 11 duty of candor. 12 Q So it's possible that you did not, correct? 13 A I don't know what informing him of his duty of 14 candor means. 15 Q Did you at any time tell Mr. Bednar that he had an 16 obligation to provide any possibly relevant prior 17 art? 18 A I probably did, but I don't recall whether I did. 19 Q It would be your practice to have done so? 20 A Yes. 21 Q And would you have helped him understand what you 22 meant by possibly relevant prior art? 23 A That would depend on whether I felt based on 24 knowing him that was necessary. I don't recall. 25 Q All right. And do you recall or would it have</p>	<p>1 Q Let me direct your attention to the first two 2 sentences under leaf removal, and then I'll ask 3 you again this paragraph on leaf removal on page 4 251 of DDX-23 is talking about using tractor 5 mounted rotary mowers to not only cut roughs but 6 to remove leaves, correct? 7 A It -- I assume there's a statement down below that 8 refers back to roughs, so it says, "Dry leaves can 9 be pulverized with a tractor mounted rotary 10 mower." It doesn't say anything about cutting the 11 rough with the rotary mower. 12 Q Okay. Then you would read this paragraph under 13 leaf removal to be talking about using a tractor 14 mounted rotary mower to pulverize leaves on a golf 15 course rough as of 1982? 16 A If that's the date of the -- this was actually 17 published, yes. 18 Q Pulverizing leaves can be done while also cutting 19 the rough, correct? 20 MR. CAMPBELL: Objection. Form. 21 THE WITNESS: I'm not an expert. I 22 don't know. 23 BY MR. ZSULI: 24 Q I imagine in your yard using your rotary mower, 25 you're --</p>

22 (Pages 82 to 85)

EXHIBIT 9

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 10

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**